Supreme Court, U. S.
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No. 96-920

In The

Supreme Court of the United States

October Term, 1996

JEAN PIERRE FREY,

Petitioner,

v.

BANK ONE, INDIANAPOLIS, N.A.,
an Indiana corporation,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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LIST OF PARTIES

The petitioner is Jean Pierre Frey ("Frey"). The respondent is Bank One, Indianapolis, N.A. ("Bank One"), a national banking association. Bank One's parent corporation is Banc One Indiana Corporation. Banc One Indiana Corporation is wholly owned by Banc One Corporation.

STATEMENT OF THE CASE

For purposes of this appeal, Bank One accepts the statement of the case in the Petition for Writ of Certiorari ("Petition"). However, the petitioner has omitted the following material facts:

The allegedly fraudulent transfers from Bianca Nationale del Lavoro ("BNL") to Bank One occurred between June 28, 1990, and August 13, 1990. Complaint, ¶ 6 (Petition at 20a). On August 4, 1992, Frey requested that BNL provide him with a statement regarding all of his accounts. *Id.*, ¶ 7 (Petition at 20a). At this time, he learned of the allegedly fraudulent transfers to Bank One. Appellant's Brief at 6. Shortly thereafter, Frey commenced an action against Ferrari and BNL in Dade County, Florida. Complaint, ¶ 7 (Petition at 20a).

REASONS FOR DENYING THE PETITION

In this diversity case, petitioner asserts negligence claims under Indiana law based on Bank One's alleged mishandling of wire transfers in 1990. The District Court dismissed the petitioner's complaint on the grounds that petitioner's claims are barred by Indiana's two-year statute of limitations. The Court of Appeals for the Seventh Circuit affirmed this dismissal in an unpublished opinion. Nothing in the unpublished opinion warrants exercise of this Court's plenary review.

The petitioner does not suggest that the Court of Appeals erroneously decided an important question of federal law or even that the decision created a conflict

between state and federal law. Instead, the petitioner argues that the decision was wrong *under the facts of this case. E.g.*, Petition at 8 ("the Court has not given consideration *to the fact* that Bank One's negligent act was neither known to Mr. Frey, nor was it ascertainable . . . until it was actually discovered . . . . " (emphasis added)). Even assuming that the Court of Appeals made a factual error in deciding this issue of Indiana law, such an error does not justify certiorari review. *See e.g., Haring v. Prosise*, 462 U.S. 306, 314 n. 8 (1983) ("a challenge to state law determinations by the Court of Appeals will rarely constitute an appropriate subject of this Court's review"); *United States v. Johnson*, 268 U.S. 220, 227 (1925) ("we do not grant certiorari to review evidence and discuss specific facts").

In any event, the decision of the Court of Appeals was the correct one. Under Indiana law, the two-year statute of limitations for negligence claims begins to run "when the plaintiff knew or, in the exercise of ordinary diligence, could have discovered that an injury had been sustained as a result of the tortious act of another." *Wehling v. Citizens National Bank*, 586 N.E.2d 840, 843 (Ind. 1992); Petition at 1. Applying this standard to the undisputed facts, it is clear that this action is time-barred.

Petitioner admits that the transactions that are the subject of this action occurred between June and August 1990. Petition at 5. He further admits that he learned of his alleged injury in August of 1992 – more than two years before he filed his Complaint against Bank One. Appellant's Brief at 6. Despite these admissions, petitioner contends that his claim is not time-barred because

he did not discover what he believes to be evidence of Bank One's negligence until 1993. *Id.* at 5, 8.

The Court of Appeals properly rejected this argument. Indiana's statute of limitations is triggered by *notice*, not actual knowledge, of an injury and causation. *Wehling*, 586 N.E.2d at 843. Frey had notice of Bank One's alleged negligence no later than August of 1992. At that time, Frey knew that Bank One had (by his theory) accepted unauthorized wire transfers of more than one million dollars. Complaint, ¶ 7 (Petition at 20a). He also knew that Bank One had placed the transferred funds in an account that he claims had been closed *since 1990. Id.*, ¶ 4 (Petition at 20a). This information was sufficient to alert him that he needed to investigate any potential claim against Bank One and to bring suit within the statutory period.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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